

**02049**

**1998/01/30**



## U.S. Department of State

### Hong Kong Report on Human Rights Practices for 1997

Released by the Bureau of Democracy, Human Rights, and Labor, January 30, 1998.

---

#### HONG KONG

Hong Kong, a small, densely populated territory that reverted from British to Chinese sovereignty on July 1, remains a free society with legally protected rights. Its constitutional arrangements until June 30 were defined by Letters Patent and Royal Instructions from London; thereafter, Hong Kong became a Special Administrative Region of the People's Republic of China as prescribed by a 1985 Sino-British Joint Declaration and the Basic Law, a "mini-constitution" approved in 1990 by China's National People's Congress. Executive powers, until June 30 were vested in a governor appointed by Britain; after July 1, such powers were vested in a chief executive selected by a 400-person selection committee chosen by a China-appointed preparatory committee. Fundamental rights before June 30 ultimately rested on oversight by the British Parliament. Thereafter, such rights were provided by the Basic Law, under which Hong Kong is to have a high degree of autonomy except in defense and foreign affairs. In practice, Hong Kong has largely controlled its internal affairs. The judiciary is an independent body adhering to the Basic Law and to English common law.

In 1995 Hong Kong completed the process of moving from an appointed to an elected legislature, and all 60 seats in the Legislative Council, which served until June 30, were open to direct or indirect balloting for the first time. The elections were widely considered to be fair and open. The Legislative Council served as a forum for vigorous debate and planning for the period after retrocession. However, China, objecting to the electoral rules instituted by Governor Patten and the Hong Kong Government for the Legislative Council, district board, and municipal council elections, dissolved these bodies at midnight on June 30. The selection committee that named the Chief Executive also chose a 60-member provisional legislature to take office after the handover. Of the elected legislative councilors, 33 of 34 who sought seats were named to the Provisional Legislature. No Democratic Party legislators, who as a group had drawn the most popular support in the 1995 elections, sought seats on the Provisional Legislature. Many popular independent legislators joined the Democrats in refusing to serve on an appointed provisional legislature. Critics contended that the selection of the Provisional Legislature had no basis in law, was unnecessary, lacked transparency, was not based on open elections, and excluded groups or individuals critical of China. Court cases challenged the constitutionality of the Provisional Legislature and the validity of its laws, but the High Court upheld the authority of the National People's Congress to establish the legislature and the laws.

China promised that the Provisional Legislature would serve no more than a year and committed to legislative council elections before July 1, 1998, based on a new election law. It also said that a broad spectrum of candidates and parties could participate in the elections. In September the Hong Kong Government introduced an election bill based on recommendations by the Preparatory Committee. As specified in the Basic Law, 20 seats are to be elected on a geographic basis through universal suffrage, 30 seats through functional (occupational) constituencies, and 10 seats through indirect election. The Preparatory Committee and Hong Kong administration decided that the 20 geographic seats should be chosen by a proportional representation system and redefined 9 of the functional constituencies, reducing the number of voters in these constituencies from over 2.5 million to less than 200,000. Some observers criticized the proportional method as favoring pro-China parties in the geographic races, and

they also criticized curtailment of the franchise for functional constituencies. However, as of year's end, all political parties have indicated that they expect the elections to be democratic, and none has said that it would boycott the elections, which the Government has set for May 1998. In December the Democratic Party chose 19 candidates to run in the elections, while leaders of other prodemocracy parties made plans to give up their British passports in order to qualify as candidates in geographic constituencies.

A well-organized police force maintains public order under the firm control of civilian authorities. Fears that Chinese troops sent to Hong Kong to replace the British military garrison after the handover would intervene in police duties have thus far proved to be unfounded. There were reports that some members of the police committed human rights abuses.

Hong Kong is a major regional and international trade and finance center. It is the principal gateway for trade and investment with China. A thriving free market economy operates with minimal government interference (a system provided for by the Basic Law for 50 years). Per capita gross domestic product surpassed \$24,000 in 1996 and continued to grow in 1997. After reversion, Hong Kong continues to enjoy economic autonomy and to function as a separate customs territory from mainland China.

Human rights problems before and after the July 1 reversion included excessive use of force by some members of the police against persons in custody, some instances of media self-censorship, limitations on citizens' ability to change their government, violence and discrimination against women, and discrimination against the disabled and ethnic minorities. The human rights community criticized the outgoing colonial government for opposing proposals to enact laws against discrimination based on race, age, and sexual orientation. However, the Legislative Council on June 26 passed the government-sponsored Family Status Discrimination Ordinance, which protects people who have children, whose marital status changes, or who are responsible for caring for a particular family member. Human rights observers were concerned that revisions to the Public Order and the Societies ordinances would undermine fundamental human rights; however, to date these fears have been unfounded.

## **RESPECT FOR HUMAN RIGHTS**

### **Section 1 Respect for the Integrity of the Person, Including Freedom From:**

#### **a. Political and Other Extrajudicial Killing**

There were no reports of political or other extrajudicial killings.

In 1997 there were 10 instances of death of detainees in police custody.

#### **b. Disappearance**

There were no reports of politically motivated disappearances.

#### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The law forbids torture and other extreme forms of abuse by the police; however, there were reports that police at times used excessive force. The law stipulates punishment for those who break the law, and disciplinary action can range from warnings to dismissal. Criminal proceedings may be undertaken independently of the disciplinary process of the police force. Allegations of excessive use of force are investigated by the Complaints Against Police Office, whose work is monitored and reviewed by the Police Complaints Council, a body composed of public members appointed by the Chief Executive.

Although excessive use of force by police is not widespread, there are occasional complaints of force being used to coerce information or confessions during interrogations. Some human rights monitors are concerned that this may be a growing problem and have documented complaints of beatings. In 1996 the Government reported 1,600 assault complaints, of which 3 were substantiated by the Complaints Council. From January to June, there were 521 assault complaints; 4 were substantiated. Critics contrast

the relatively large number of complaints with the very small number substantiated and urge changes to a system whose review process appears to favor the police. The Complaints Council in May announced that the force had agreed to a lower standard of proof for less serious complaints. However, many observers criticized the Government for withdrawing on June 23 a bill to strengthen the Complaints Council after the legislature added an amendment expanding the Council's oversight of the Complaints Against Police Office to include investigative powers. The Government argued that the amendment would have severely disrupted effective operation of the police complaints system.

The Basic Law provides that military forces stationed by China in Hong Kong for defense purposes "shall not interfere in the local affairs of the region." Although many persons worried about the dispatch of 4,000 People's Liberation Army (PLA) troops to Hong Kong at the time of handover to replace British forces, the Government pledged that they would play no police role. The PLA troops have assumed a very low profile. Under the authority of the Basic Law the Chief Executive may request their assistance in cases of natural disaster or civil disturbance that local forces cannot handle.

Although conditions vary among facilities, prisons conform to international standards.

The Government permits prison visits by human rights monitors. After one such visit in June, Human Rights Watch/Asia and Human Rights Monitor noted that the system "had much to recommend it," although also noting that it showed the strains of overcrowding. Terming the visit a benchmark of prison conditions just before reversion, these groups recommended that an independent prisons inspectorate provide future outside oversight of conditions in Hong Kong's penal and detention facilities. The Government, however, decided against establishing such an inspection system.

#### d. Arbitrary Arrest, Detention, or Exile

Until reversion, British legal practice and common law traditions governed the process of arrest and detention to ensure substantial and effective protection against arbitrary arrest or detention.

After reversion, common law, precedents previously in force, and the Basic Law (which incorporates the International Convention on Civil and Political Rights) provides such protections. The Government has stated that these protections are equal to those applicable prior to July 1, 1997.

Exile is not practiced.

#### e. Denial of Fair Public Trial

Until June 30, the judicial and legal systems were organized by principles of British constitutional law and legal precedent and provided for an independent judiciary, which the Government respected in practice. An independent judiciary endured after Hong Kong's reversion, underpinned by the Basic Law's provision that Hong Kong's common law tradition be maintained.

Hong Kong's ultimate judicial body, the Court of Final Appeal, was established on July 1, inheriting, in large part, the power of final judgment formerly held by the Privy Council in London. Incoming government officials were responsible for setting up the court. Judges are nominated by an independent commission; the Chief Executive is required to appoint those nominated, subject to endorsement by the legislature. By late July, the Chief Executive had appointed a chief justice, three other permanent justices, and several nonpermanent jurists from Hong Kong and other Commonwealth jurisdictions to serve on a case-by-case basis.

Beneath the Court of Final Appeal is the High Court, composed of the Court of Appeal and the Court of First Instance. Lower judicial bodies include the district court (which has limited jurisdiction in civil and criminal matters), the magistracy (exercising jurisdiction over a wide range of criminal offenses), the coroner's court, the juvenile court, the lands tribunal, the labor tribunal, the small claims tribunal, and the obscene articles tribunal.

According to the Basic Law, the Hong Kong courts have "no jurisdiction over acts of state such as

defense and foreign affairs." The Basic Law also vests in the Standing Committee of the National People's Congress the power to interpret the Basic Law on matters that are the "responsibility of the Central People's Government or concern the relationship between the central authorities and the Special Administrative Region." If broadly applied and loosely interpreted, these exceptions to the Court of Final Appeal's power of final jurisdiction could be used to limit the independence of the judiciary. No such limitations have occurred.

The law provides for the right to a fair public trial, and this is respected in practice. Trial is by jury.

There were no reports of political prisoners.

#### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The law provides for the right of privacy, and the Government generally respects this right in practice. For more than 20 years, the Independent Commission Against Corruption was vested with powers, including the right to authorize searches and detain suspects, that are normally exercised only by a judicial officer. Amendments to ordinances governing the Commission were enacted in July 1996 and took effect on June 20, depriving the Commission of the independent authority to issue arrest or search warrants (it must now go to the courts). However, it still does not apply the presumption of innocence in corruption cases, and criminal convictions are obtained by regarding any excessive, unexplainable assets held by civil servants as ill-gotten until proven otherwise.

In December 1996, the Government established a privacy commission under the Personal Data (Privacy) Ordinance to prevent misuse and disclosure of data such as medical and credit records. By May 9, the commission had received 3,800 inquiries and 70 complaints. In August the commission proposed a code to prevent banks and other companies from keeping photocopies of customers' identity cards. A new clause in the ordinance also prohibited matching sets of personal data without the consent of the subject individual or the commissioner, although some government departments were exempt in order to combat social welfare abuse and tax evasion.

### **Section 2 Respect for Civil Liberties, Including:**

#### **a. Freedom of Speech and Press**

Hong Kong has a tradition of free speech and of a free press, and there was little apparent change in these freedoms after reversion. However, some journalists practiced self-censorship for fear of running afoul of the new authorities. People continued to speak freely to the media. Political debate remained vigorous. Numerous viewpoints, including stories and opinions critical of the Hong Kong and Chinese Governments, were aired in the mass media, in public forums, and by political groups. International media organizations operated freely. Hong Kong's 16 major daily newspapers, 2 commercial television stations, and 2 commercial radio stations functioned with virtually no government control. There were no special visas needed for foreign reporters to work in Hong Kong, and no government-issued press cards.

The media continued to operate as they had earlier. Newspapers published without obvious reprisals. There was neither a sharp increase nor decrease of critical coverage. Some stories that were sensitive for China, such as a bombing in Xinjiang, were first reported in the Hong Kong newspapers. However, China continued to require journalists--both foreign and those from Hong Kong--to apply for permission to make reporting trips to the mainland. Those who bypassed official channels--which many felt they must do to get the stories they wanted--ran a risk of violating Chinese regulations. At least one Hong Kong publication, Apple Daily (whose owner, Jimmy Lai, offended China's leadership several years ago) subsequently was unable to get official permission for his reporters to cover events on the mainland. Lai also ran into problems in arranging for an initial public offering of stock in his companies. Investment banks and brokerage firms, wary of offending Beijing, reportedly refused to handle Lai's stock floatation. For the most part, however, Hong Kong reporters continued to enter China to cover sensitive stories related to Hong Kong, Taiwan, or the mainland.

The Basic Law provides for freedom of speech, of the press, and of publication, but it also directs Hong Kong to pass laws prohibiting "treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets." The Hong Kong administration has said it does not plan to submit proposals for such legislation until after the election of a new legislature next year. On October 10, which was National Day in China before 1949 and continues to be observed in Taiwan, police removed flags of the pre-1949 Chinese government (still used by the Taiwan authorities) that appeared in public places, and the Chief Executive warned that laws would be enacted making it a crime to advocate Taiwanese or Tibetan independence. Hong Kong observations of the October 10 National Day were allowed and were held without incident. Stories about removal of the flags, as well as photos of flags that were not removed, ran prominently in the media. Shortly after reversion, the Hong Kong Journalists Association criticized the Government for giving China Central Television favorable treatment in covering handover events and special access to the Chief Executive's early official appearances.

Some polls suggest that both journalists and the public believed that there was self-censorship: Over one-third of journalists interviewed in May said that they practiced self-censorship in muting criticism of China or large Hong Kong companies. According to a September poll, nearly half the public thought that the media practiced self-censorship, and two-thirds believed that the media were reluctant to criticize China. However, it was difficult to verify specific instances in which self-censorship killed a story. The pressures on journalists were subtle--there were no direct orders to refrain from writing, but there was a wide perception of a need for special care toward topics of particular sensitivity to China: Leadership dynamics, military activity, or advocacy of Taiwanese or Tibetan independence. Chinese-language journalists reported a pervasive, if tacit, understanding that editors expected those reporting on China to be particularly certain of their facts and careful in their wording. Another source of pressure came from the belief by some publishers and editors that advertising revenues could suffer if they were seen to be too antagonistic to China in their editorial judgments. In spite of censorship concerns, the film "Gate of Heavenly Peace," banned in China because of its graphic and critical coverage of the Tiananmen incident, continued to play in Hong Kong after June.

In 1994 Ming Pao journalist and Chinese national Xi Yang was taken into custody in China for reporting economic data that China deemed state secrets. His arrest was widely cited as having had a chilling effect on Hong Kong media. He was released from prison in February, 9 years before the end of his sentence. The next day, Ming Pao ran an editorial thanking China for showing "leniency" and added that Xi Yang's release "has dispelled misgivings." However, local newspapers reported that after a document leaked from the 15<sup>th</sup> Chinese Communist Party Congress in September, two Beijing correspondents for Hong Kong newspapers were detained. One, a Hong Kong resident reporting for Ming Pao was reportedly held for 2 days, and the other, a mainland resident with Ta Kung Pao, for 2 months. The stories were not confirmed by the reporters' employers. However, journalists expressed concern about continuing control of Hong Kong-affiliated reporters working on the mainland, and about Hong Kong self-censorship in reporting on the September incident.

In 1995 the Government introduced a code on access to information to govern the provision of information by government agencies. The code was extended to the entire Government in December 1996. It specifies what information must be made available routinely to the public and provides rules for dealing with requests for access to government information. Previously, no laws existed to clarify what information would be made available. The code requires that government departments release information to the public unless there is a valid reason to withhold it. A department may withhold "sensitive" information in such areas as defense, security, external affairs, or law enforcement. Guidelines for access to information are provided to the public on an Internet web page.

Delays in screening three commercial films critical of China led some observers to cite the local movie industry for cultural self-censorship--a charge the industry denied. A distributor said on December 3 that the film "Red Corner" would play in February or March 1998, and the Motion Picture Industry Association, stressing that decisions were made on a commercial basis, stated that distributors were also making bids to bring in "Seven Years in Tibet" and "Kundun" by March. Secretary for Broadcasting, Culture, and Sport Brian Chau stated in October that there was nothing to prevent these movies from being shown in Hong Kong.

The Government respects academic freedom. There is a wide range of opinions in lively debate on campuses, and the issue of academic freedom has not generally caused much public comment. Prior to reversion, Professor Nihal Jaywickrama, chairman of the Hong Kong section of the International Commission of Jurists and an eminent authority on human rights law, applied to extend his appointment at Hong Kong University beyond retirement age but his request was rejected. Some persons suggested that Jaywickrama was denied because of his political activism.

**b. Freedom of Peaceful Assembly and Association**

Freedom of assembly and of association are practiced without significant hindrance.

In March under a provision of the Basic Law, the Standing Committee of the National People's Congress made a determination as to which existing Hong Kong laws were contrary to the Basic Law and would not apply after July 1. Its move to alter the 1991 Bill of Rights Ordinance and scrap recently liberalized laws on demonstrations and political parties caused an outcry. After public consultations, the Chief Executive-designate announced proposals for amending the ordinances concerned in a manner less restrictive than in initial plans or older colonial laws. The Public Order Ordinance reintroduced licensing for demonstrations and empowered the police to raise objections on national security grounds, but in practice it resembled a notification system. The Societies Ordinance reintroduced registration of parties and banned ties between them and foreign political groups. Critics acknowledged the improvement on earlier plans but attacked the ban on foreign funding of political parties and the inclusion of national security grounds for prohibiting demonstrations or parties. They also faulted changes in the Bill of Rights Law stripping it of its overriding status in jurisprudence, although lawyers noted that it and the common law would still protect civil rights.

Many persons feared that the Government might use the Public Order Ordinance to curtail freedom of assembly. However, demonstrations continued to take place regularly after July 1. The night of the handover, the Democratic Party organized a speech from the balcony of the legislative council building, and nobody was detained. The Government noted on September 15 that 150 demonstrations had occurred since reversion, averaging 2 a day, without any arrests. There was some scuffling with police and five demonstrators were arrested during World Bank meetings on September 22. Some Hong Kong activists note that police personnel sometimes outnumber demonstrators at a demonstration. However, residents continued to exercise their right of assembly.

Many persons also feared that the Government would use the Societies Ordinance to restrict political activity by forcing parties to sever ties with political groups abroad or curtailing activities of nongovernmental organizations (NGO's). In turn, Chief Executive Tung expressed concern lest Hong Kong be used by foreign groups as a base of subversion against China. After the handover, however, the Government took no action to restrict the operations of parties, other political organizations, or NGO's. Freedom of association continues.

However, Democratic Party officials, independent politicians, and human rights advocates continued to be concerned that restrictions in the revised statutes could later be used to curtail freedom of assembly and association, particularly in dealing with critics of the Government or of China.

The Basic Law provides that Hong Kong shall enact laws on its own to prohibit subversion, secession, treason, and sedition against the Chinese government. In November 1996, the Government introduced an amendment to the Crime Ordinance addressing these infractions. China objected because it had not agreed to the language, adding that the new government, not the pre-handover government, should enact the new provisions. The outgoing Legislative Council on June 23 defeated crime ordinance provisions on subversion and sedition, but on June 24 passed language on treason. The Chief Executive-designate said that the new government would not accept the legislation, and that the potentially controversial task of amending the Crime Ordinance to comply with the Basic Law would fall to the Legislative Council elected in May 1998.

**c. Freedom of Religion**

The Bill of Rights Ordinance prohibits religious discrimination. Following the handover, the Basic Law provides that the Government respect religious freedom and activities. Government policy and general practice ensure freedom of religion. The Chief Executive has pledged that the Government would restrict neither religious belief nor religious social and educational activities.

Some religious leaders noted that the Basic Law, which calls for ties between Hong Kong and mainland religious organizations to be based on "nonsubordination, noninterference and mutual respect," could be used to limit such contacts. Following a visit to China in June, local Catholic leaders expressed increased confidence in the situation in Hong Kong and hoped for closer ties with the church on the mainland.

#### d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

There is freedom of movement within Hong Kong, and travel documents are freely and easily obtained. The Special Administrative Region passport became Hong Kong's official passport on July 1. Demand for the passport far outstrips the Government's output, but every effort is made to fill applications for passports for emergency travel and priority is given to applicants whose previous travel documents have expired. Present production is 2,000 passports a day. The British National Overseas passport is still valid. However, the British Dependent Territories Citizen passport ceased to be valid on June 30. Those holding that document were advised to apply for British National Overseas Passports before July 1. Individuals eligible to receive the British document but who missed the deadline and are Chinese nationals with the right of abode in Hong Kong may apply for the Hong Kong Special Administrative Region passport.

Persons from Taiwan must apply to Hong Kong immigration through specified airlines for an entry permit valid for 1 year or 3 years. Those persons from Taiwan but residing elsewhere must secure a declaration of identity issued by a notary public or apply to a Chinese diplomatic or consular mission for a Chinese travel permit; Chinese missions issue visas to those with either of these documents. Procedures are the same for official and nonofficial travelers from Taiwan. As was the case before July 1, the Taiwan passport is not recognized as valid for visa endorsement purposes.

Chinese authorities do not permit a number of Hong Kong human rights activists to visit the mainland. A well-known Chinese labor organizer and political dissident, Han Dongfang, remains in Hong Kong. The Chinese Government continues to refuse him entry into China as it has ever since his expulsion from China in 1993.

On July 9, the Provisional Legislature passed a bill requiring mainland-born children claiming the right of abode through their parentage to obtain prior endorsement by China. About 2,000 minors in this category were already in Hong Kong; an estimated 66,000 remained in China. Human rights activists claimed that the statute violated the Bill of Rights Ordinance and the Basic Law. The Government responded that the issue was at the heart of Hong Kong's immigration policy and orderly admission program, and that the Basic Law gives China the duty of screening all mainland Chinese admitted to Hong Kong. The High Court found for the Government on October 9; further appeal is expected.

Hong Kong has never refused first asylum to Vietnamese boat people. Prior to June 1988, refugee status was automatically accorded them. Since then asylum seekers have been screened to determine their status and held in detention centers awaiting resettlement in other countries or repatriation to Vietnam. From October 1996 to September 1997, 6,225 persons were voluntarily repatriated to Vietnam through the auspices of the United Nations High Commissioner for Refugees. There were 4,887 people repatriated under the (involuntary) Orderly Return Program from October 1996 to September 1997.

Some 2,350 Vietnamese remained in Hong Kong camps in October: 1,300 were screened-in as refugees who, mostly for reasons of health or criminal acts, had not been resettled. Over 1,000 are Vietnamese illegal migrants who are not screened-in and thus awaiting repatriation.

There are also 288 Vietnamese illegal migrants who were formerly in China in Hong Kong. Ten of them sued against their detention; on September 26, a Hong Kong judge ruled in their favor. Another court

ruling on October 15 freed the other 278. Their future is uncertain because the Government wants to repatriate them to the mainland, but China has said it would not take them back. The number of illegal mainland Chinese immigrants has been estimated to be at least 15,000. During 1997 the Government returned illegal Chinese immigrants to China at the rate of 54 per day. Only rarely, when a person qualifies as a refugee under the international agreement on the status of refugees, is permission to remain in Hong Kong granted.

### **Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government**

Although the prehandover Government moved to democratize district and municipal boards and the Legislative Council, residents did not have the right to change the government. Residents ability to exercise this right remained limited after the handover. In the prehandover Government the governor was appointed by and served at the pleasure of the British Crown. He was advised on policy by an Executive Council, which he appointed. Until 1985 the Legislative Council was also an advisory body whose members were either appointed by the Governor or served in their capacity as senior civil servants. Hong Kong remains a free society with most individual freedoms and rights protected by law and custom.

The Legislative Council enacted and funded legislation and also debated policy and questioned the administration. Although the Legislative Council's power to initiate legislation was limited (all bills with budgetary implications had to be approved by the Government before introduction), it became increasingly assertive. The Governor had ultimate control of the administration of Hong Kong but, by convention, rarely exercised his full powers. In practice, decisions were reached by consensus. Political parties and independent candidates were free to contest seats in free and fair elections. Representative government employing universal franchise existed at the local district board level.

China opposed the Hong Kong Government's 1994-95 election reforms, through which all district and municipal board members were chosen by direct elections, and all seats in the Legislative Council were chosen by direct or indirect balloting. Citing Britain's unilateral decision on the reforms, China said that the Legislative Council would "terminate" on June 30, along with the district and municipal boards. In March 1996, China's Preparatory Committee said that a provisional legislature would be formed to serve for up to 1 year after reversion until a new legislature could be elected. In December 1996, a selection committee of 400 named C. H. Tung as Chief Executive and chose a 60-seat provisional legislature, including 33 of 34 sitting lawmakers who sought inclusion. Hong Kong's Democratic Party, which declined to seek seats in what it deemed an illegitimate body, believed that the process did not have a legal foundation, lacked transparency, was not based on a free and fair election, and excluded groups, parties, and individuals critical of China.

In April the Provisional Legislature began working across the border in Shenzhen. The Preparatory Committee and Chief Executive-designate directed it to focus on urgent transition business: To organize 1998 legislative elections, determine nationality and right of abode, and enact the new versions of laws voided by the Standing Committee of the National People's Congress (Societies and Public Order statutes). The period from April to June saw much political tension and legal uncertainty as the Legislative Council, the Provisional Legislature, the prehandover government, and the Chief Executive-designate's office contested these issues, as well as legislation concerning labor, subversion, secession, and treason.

The Legislative Council was dissolved at midnight on June 30. The Provisional Legislature, sworn in shortly after midnight, passed an Omnibus Reunification Ordinance before dawn on July 1 to enact new laws that it had drafted and passed earlier and to provide for administrative and legal continuity. Court cases challenged the constitutionality of the Provisional Legislature and the validity of its laws, but the High Court on July 23 upheld the new government's position that the legislature and laws were valid. The Court of Final Appeal is also expected to rule on the case.

The Chief Executive pledged to hold elections in May 1998 for a new legislative council, and the Provisional Legislature in September passed a bill based on government proposals. As in 1995, 20 seats are to come from geographic districts through universal suffrage, 30 from functional (occupational)

constituencies, and 10 from votes by a committee of local elected officials. Hong Kong's Democratic Party and independents criticized the bill for replacing the 1995 single-vote, single-seat system for geographic seats with a proportional system which they claim will cut down on the number of their members elected and help smaller, pro-China parties win seats in the geographic constituencies. They also criticized the replacement of nine broad 1995 functional constituencies with more narrowly drawn groups akin to pre-1995 groups, cutting the total number of potential voters in functional constituencies from 2.7 million to 180,000. However, the Chief Executive's appointment in September of an electoral affairs commission to supervise the elections was well received; two of the three nominees, including a distinguished jurist as chair, had served on the Election and Boundary Commission for the previous government. Similarly, there was general acceptance of the electoral districts proposed in October by the Commission. The Constitutional Affairs Bureau prepared for May elections and initiated a campaign to increase voter turnout, which had been just below 1 million in September 1995, well below the more than 4 million potential voters. Under this system, and in the current circumstances, it is unlikely that any single party could win control of the legislature through the electoral process.

The Basic Law provides for elections for chief executive in 2002 and 2007, by a "broadly representative election committee" of 800 local residents appointed by China. The Basic Law also permits amendment of the chief executive selection process after 2007 by a two-thirds majority of the Legislative Council, with the consent of the Chief Executive and the Standing Committee of the National People's Congress, with a goal of universal suffrage.

The prehandover Government continued efforts to place local persons in senior government positions and fulfilled its commitment to fill all "principal official" posts with local officers by 1997. All 23 principal officer posts (Chief Secretary, Financial Secretary, Secretary for Justice, 15 branch secretaries, Commissioner of the Independent Commission against Corruption, Director of Audit, Commissioner of Police, Director of Immigration, and Commissioner of Customs and Excise) are now filled by local officers. The last expatriate principal officer (Attorney General) was replaced by a local resident on July 1. All other principal officers continued in their positions through July 1. As of July 1, 82 percent of the top directorate-level jobs and 93 percent of administrative and other senior management positions were filled by local staff.

Nevertheless, expatriates remain in key positions in the Legal Department and the judiciary; at the same time, 76 percent of the government counsel positions and 83 percent of the police positions (police inspector and above) are filled by local officers.

Women are playing a larger role in politics, with larger numbers running for public office in 1996 and 1997 than ever before. In early 1997, women constituted 12 percent of the Legislative Council; they make up 15 percent of the Provisional Legislature. Women account for 25 percent of the top government directorate-level posts, and 46 percent of government administrative officers.

#### **Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

Until reversion, the international covenants on civil and political rights, and on economic, social, and cultural rights applied, with certain restrictions, to Hong Kong through the United Kingdom. The Basic Law provides that these covenants continue to apply to Hong Kong. China stated in October 1996 that it did not consider itself obligated to file reports to the United Nations on implementation of the agreements in Hong Kong because China is not a signatory. However, on October 27, 1997, China signed the Covenant on Economic, Social and Cultural Rights; and, on November 22, China announced that it would submit reports under both Covenants to the United Nations under the principle of "one country, two systems." Procedures for preparation and submission of the required reports are unclear. Hong Kong residents have expressed interest in participating in the drafting process and have expressed concern about the possible role of the National People's Congress in the process.

The Convention on the Elimination of all forms of Discrimination Against Women was extended to Hong Kong in October; Hong Kong and China have agreed on reporting under both this convention and the Convention on the Elimination of All Forms of Racial Discrimination.

Dozens of local and international NGO's operated freely in Hong Kong before reversion, and, despite earlier concerns about possible restrictions under the revised Societies Ordinance, continued to operate without hindrance after the handover. These organizations have thriving contacts with the Hong Kong community and with groups overseas. Government officials are cooperative and responsive to their views. In September China denied accreditation to attend the World Bank meeting in Hong Kong to two international human rights organizations that had been critical of its human rights record.

### **Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status**

After the passage of laws in 1995 banning discrimination on the basis of sex and disability, an Equal Opportunities Commission was established. The Commission began its oversight of nonemployment and employment-related provisions in 1996. Women's groups and others have criticized the Commission for passivity in combating discrimination and for emphasizing conciliation instead of acting as a watchdog or pursuing court cases. However, the Government has begun to bring cases against discriminatory employment advertisements.

On June 26, the Legislative Council enacted the Family Status Discrimination Ordinance, which protects people whose marital status changes, who have children, or who are responsible for caring for another family member, such as a child or elderly person; enforcement began in November. However, the Legislative Council voted down bills banning discrimination on grounds of age, race, and sexual orientation--the second time such legislation has been defeated since 1995.

Chinese has equal status with English in most government operations but not in judicial proceedings, where almost all civil cases and most criminal cases are heard in English. To help remedy this, the Government has increased the number of officers in the Legal Aid Department proficient in Chinese from 3 (of 9) to 10 (of 11). A 1996 pilot scheme for simultaneous interpretation in some court proceedings failed, but the Government extended the use of bilingual prosecution documents and indictments. All laws were translated into Chinese by the time of the handover, and the High Court in August heard the first jury trial ever conducted in Cantonese. By September 30, about 180 law clerks and legal aid counsel had attended Chinese writing courses; training has also stressed advocacy in Chinese. According to the Basic Law, English may be used as an official language by the executive authorities, legislature, and judiciary.

#### **Women**

Violence against women remains a significant problem. The only law to protect battered women is the 1987 Domestic Violence Ordinance, which allows a woman to seek a 3-month injunction against her husband (extendible to 6 months). Domestic violence may also be prosecuted as common assault. The Government enforces the laws and prosecutes violators. It also funds programs such as family life education counseling, a hot line service, temporary housing, legal aid, and child protective services.

Many women do not seek help when subjected to violence; it goes unreported because of cultural factors and inadequate information about available assistance and resources. To address this, the Government set up a working group on battered spouses in 1995; crafted multidisciplinary procedural guidelines on handling battered spouse cases in 1996; and initiated public education and media programs. A statistical information system began in April to collect data on battered spouse cases from concerned departments and NGO's. Women's action groups continue to urge better legal protection for battered wives. A total of 334 new battered spouse cases were handled by the Social Welfare Department and NGO's in 1996.

The general incidence of rape is low. There were 100 cases in 1994, 103 in 1995, 86 in 1996, and 56 from January to September.

Women have faced significant discrimination in employment, salary, welfare, inheritance, and promotion (see Section 6.e.). An October survey found that although most employers no longer specify sex in recruitment advertising, they often reject applicants of both sexes based on job stereotypes. According to government statistics for 1996, unemployment in all age groups among female workers

was lower than for male workers. As a result of 1994 revisions to traditional inheritance statutes, the law treats men and women equally in inheritance matters.

During 1991-95, the number of female secondary student candidates who took university advanced-level examinations accounted for between 51 and 55 percent of the total, and the number of female candidates who matriculated at universities accounted for between 52 and 56 percent of all matriculating candidates. Women are also entering fields such as medicine in greater numbers; at the University of Hong Kong, the proportion of female medical students in 1996-97 was 41 percent, up from 32 percent the year before, although there continued to be few women in specialties like surgery.

#### Children

The Government is firmly committed to children's rights and welfare through well-funded systems of public education, medical care, and protective services. It supports programs for custody, protection, day care, foster care, shelters, small group homes, and assistance to families.

Child abuse and exploitation have not been considered widespread. However, the Government said in 1996 that the number of child abuse cases had almost doubled in 2 years. In 1995 the police set up a child abuse investigation unit to improve treatment of victims, and legislation was passed making it easier for abused children to testify in court. Legal penalties for mistreatment or neglect of minors were also substantially increased. In 1996 the Government set up an interviewing suite for recording statements in a child-friendly environment and adopted multidisciplinary measures for child sexual abuse cases. A witness support program was also launched in 1996 to help child witnesses in need. A child witness information kit in Chinese, with books explaining legal and court proceedings was published in April to help reduce anxiety, and a Child Care Center Bill was passed in May to prevent unsuitable persons from providing child care services and to facilitate the formation of mutual help child care groups.

#### People With Disabilities

Advocacy groups claim that discrimination against the physically and mentally disabled persists in employment, education, and the provision of some state services. Access to public buildings and transportation is a problem; a spot survey in 1996 found that of 20 footbridges, only 3 had ramps on both sides, and that of 100 commercial buildings, half had inadequate facilities. Advocates have urged the Government to do more to encourage greater public acceptance of the physically and mentally disabled. The Government has been responsive, pursuing programs to promote public awareness. The 1995 Antidiscrimination Law called for improved building access and sanctions against those who discriminate. An amended buildings ordinance in 1997 updated design requirements. In October the Government ordered a large shopping center to reinstate facilities for the disabled after inspectors found handrails removed, a ramp blocked, and toilets locked. The Government has also begun an integrated work extension program in sheltered workshops, increased funding for the mentally disabled, expanded vocational assessment and training, and conducted education programs on rehabilitation. There are about 4,600 disabled persons employed as civil servants of a total civil service work force of 184,638--about 2.5 percent; there are approximately 9,000 disabled persons in school of a total student population of 919,620--just under 1 percent. In 1997 the Government started a special university admission scheme for the disabled.

#### National/Racial/Ethnic Minorities

Racial, sex, and class discrimination against Filipino women, 136,000 of whom work under contract in Hong Kong, has been the focus of news reports. In May the Asian Migrants' Coordinating Body, a newly formed group representing Asian domestic workers, sought assurances of continued protection for foreign workers' rights after the handover. The Chief Executive stated that Filipino domestic workers would continue to be welcome members of Hong Kong's work force, and no change in their status took place after reversion.

Ethnic Indians without Indian citizenship had been concerned about their future nationality and right of

abode status; however, the United Kingdom decided to issue British citizenship and passports to several thousand stateless Hong Kong residents.

## **Section 6 Worker Rights**

### **a. The Right of Association**

The law provides for the right of association and the right of workers to establish and join organizations of their own choosing. Trade unions must be registered under the Trade Unions Ordinance. The basic precondition for registration is a minimum of seven persons who serve in the same occupation. The Government does not discourage or impede the formation of unions. During 1996, 22 new trade unions were registered. By the end of 1996, there were 552 trade unions: 535 employees' unions and 17 mixed organizations of employees and employers. By year's end, over 22 percent of Hong Kong's 3.1 million salaried employees and wage earners belonged to a labor organization.

Work stoppage and strikes are permitted. However, there are some restrictions on this right for civil servants. In 1996 there were 17 strikes involving 1,763 workers. Even though employees have the freedom to strike and there is no legislative prohibition of strikes, in practice, most workers must sign employment contracts that typically state that walking off the job is a breach of contract and can lead to summary dismissal.

To date, Hong Kong has amended labor legislation and taken administrative measures to apply 49 International Labor Organization (ILO) conventions. In the Basic Law, China committed to adhere to these conventions.

Labor unions may form federations and confederations. In the past such affiliation could not be cross-industry in scope. However, on October 29, the Provisional Legislature passed a government-proposed legislative amendment lifting that prohibition.

Unions may affiliate with international bodies, although limitations exist. A bill passed in the final days of the prereversion legislature removed a long-standing requirement that unions must seek the Government's approval prior to affiliating with foreign organizations. However, the Provisional Legislature on October 29 passed government-proposed amendments requiring unions to notify the Labor Department's Registrar of Trade Unions within 1 month of joining a foreign labor organization and to seek approval of the majority of their voting members before establishing links to foreign labor organizations. The amendments also require that a union first receive the approval of the Chief Executive before becoming a member of a foreign organization other than those for workers, employers and relevant professional organizations. Finally, the amendments require that labor unions obtain the Chief Executive's approval to contribute or donate funds to any trade union outside of Hong Kong and prohibit the use of trade union funds for political purposes.

### **b. The Right to Organize and Bargain Collectively**

The ILO Convention on the Right to Organize and Bargain Collectively has been applied to Hong Kong without modification since 1975. Labor union representatives in the prehandover legislature sought, shortly before the handover, to make collective bargaining--not a statutory requirement under the convention--and related practices in Hong Kong a right of labor unions for the first time, by passing an ordinance requiring that unions representing 15 percent or more of a company's total work force in companies with over 50 employees have a right to collective bargaining procedures.

On October 29, the Provisional Legislature passed government-sponsored legislation to repeal the ordinance, which it argued was not conducive to industrial harmony and was hastily passed without adequate consultation with affected parties. The ILO has warned that it would look into any formal complaints lodged by union members over government actions to repeal or amend collective bargaining and other labor laws. The International Confederation of Free Trade Unions also criticized the Government's actions.

With the repeal of the short-lived collective bargaining legislation, the prehandover framework continued: There were no laws that stipulated collective bargaining on a mandatory basis. Wage rates in a few trades like tailoring and carpentry were determined collectively in accordance with established trade practices and customs rather than as a statutory mechanism.

In practice, collective bargaining is not widely practiced. Unions generally are not powerful enough to force management to engage in collective bargaining. The Government does not encourage it, since the Government itself does not engage in collective bargaining with civil servant unions but merely "consults" with them. Free nonbinding conciliation services are afforded by the Labor Relations Division of the Department of Labor to employers and employees involved in disputes that may involve statutory benefits and protection in employment as well as arrears of wages, wages instead of notice or severance pay. The Department of Labor takes a positive attitude towards the participation of trade unions in such dispute negotiations. In 1996 the Labor Relations Division handled 226 trade disputes and 22,840 claims, more than half of which arose from termination of contract or dismissal cases. About 65 percent of these trade disputes and claims were settled through conciliation by the Labor Relations Division.

The Employment Ordinance includes provisions protecting against antiunion discrimination. Employees who allege such discrimination have the right to have their cases heard by the Department of Labor's Labor Relations Division. Violation of the antiunion discrimination provisions is a criminal offense carrying a maximum fine of \$2,564. However, employers are not required to reinstate or compensate employees.

Another law passed by the prreversion legislature shortly before it was disbanded sought to strengthen the antidiscrimination clauses within the Employment Ordinance. On October 29, however, the Provisional Legislature passed a government-proposed bill to repeal the measure. The Government argued that existing law already offered adequate protection against unfair dismissal arising from antiunion discrimination.

Critics also point to a lack of protection for over 164,000 Filipino, Thai, Indonesian, and other foreign national domestic workers who face deportation if dismissed by their employers and are thus vulnerable to abuse.

There are no export processing zones.

c. Prohibition of Forced or Compulsory Labor

The use of forced labor is prohibited in the Hong Kong Bill of Rights Ordinance. While this legislation does not specifically prohibit forced or bonded labor by children, there are no reports of such practices in Hong Kong.

d. Status of Child Labor Practices and Minimum Age for Employment

The Employment of Children Regulations prohibit employment of children under the age of 15 in any industrial establishment. Children 13 and 14 years of age may be employed in certain nonindustrial establishments, subject to conditions aimed at ensuring a minimum of 9 years' education and protecting their safety, health, and welfare. In 1996 the Labor Department conducted 115,877 inspections of industrial workplaces and only 5 cases of underage workers were discovered. A total of 33,892 inspections of nonindustrial workplaces uncovered only 11 cases of child employment. While provisions against forced or compulsory labor do not specifically refer to children, such practices appear not to exist (see Section 6.c.).

e. Acceptable Conditions of Work

There is no statutory minimum wage except for foreign domestic workers. As of December 1996, the minimum wage for such workers is about \$500 (HK\$ 3,860) a month. Because the law also requires employers to provide foreign domestic workers with housing, worker's compensation insurance, travel

allowances, and meals or a meal allowance in addition to the minimum wage, foreign domestic workers have a decent standard of living.

Aside from a small number of trades where a uniform wage structure exists, wage levels are customarily fixed by individual agreement between employer and employee and are determined by supply and demand. Some employers provide workers with various kinds of allowances, free medical treatment and free subsidized transport.

In order to comply with provisions in the Sex Discrimination Ordinance, as of mid-July provisions in the Women and Young Persons (Industry) Regulations that had prohibited women from joining dangerous industrial trades and limited their working hours, including compulsory weekly rest days, were dropped. Work hours for young people 15 to 17 years of age in the manufacturing sector remain limited to 8 per day and 48 per week between 6 a.m. and 11 p.m. Overtime is prohibited for all persons under the age of 18 in industrial establishments. Employment in dangerous trades is prohibited for youths except in the case of males 16 to 17 years of age. The Labor Inspectorate conducts workplace inspections to enforce compliance with these regulations.

Hong Kong's Factory Inspectorate Division was restructured in May 1996 as part of a government effort to strengthen its safety and health promotion and enforcement program. The new division--part of a new occupational safety and health branch of the Labor Department--comprises four units: An operations division covering field services such as safety and health advice; a support services division responsible for technical support services; a planning and training division; and a legal services division charged with processing and conducting prosecutions.

The Factories and Industrial Undertakings Ordinance and its 27 sets of subsidiary regulations regulate safety and health conditions. The Labor Department conducted nearly 150,000 inspections of industrial and nonindustrial workplaces in 1996 as part of its enforcement efforts. In 1996 a total of 40,251 industrial accidents were reported, of which 66 were fatal. Employers are required under the Employee's Compensation Ordinance to report any injuries sustained by their employees in work-related accidents. There is no specific legal provision allowing workers to remove themselves from dangerous work situations without jeopardy to continued employment.

[end of document]